

General Terms and Conditions for Apartmenthouse Accommodation Contracts

Translation only. The only legally binding version of this document is the German one. November 2009

I. Scope of Applicability

- These Terms and Conditions govern contracts for the rental use of apartments for lodging purposes, as well as all other goods and services rendered by the apartmenthouse for the customer in this connection (Apartmenthouse Contract). The term "Apartmenthouse Contract" comprises and replaces the following terms: lodging, rooms, apartment, apartment contract.
- The prior consent in text form of the apartmenthouse is required and if apartments provided are to be sublet or rented to other parties or used for other than lodging purposes, whereby section 540, para.1.sentence 2 German Civil Code is waived insofar as the customer is not a consumer.
- The customer's general terms and conditions shall apply only if these are previously expressly agreed in text form.

II. Conclusion of Contract, Parties, statute of Limitations

- The contract shall come into force upon the apartmenthouse's acceptance of the customer's application. At its discretion, the apartmenthouse may confirm the apartment reservation in text form.
- The parties to the contract are the apartmenthouse and the customer. If a third party placed the order, on behalf of the customer, than that party shall be liable vis-à-vis the apartmenthouse for all obligations arising from the apartmenthouse accommodation contract as joint and several debtor together with the customer, insofar as the apartmenthouse has a corresponding statement by the third party.
- Any claims against the apartmenthouse shall generally be time-barred one year after the commencement of the general statute of limitations period. Damage claims shall be time-barred after five years, independent of knowledge insofar as they are not based on claims arising out death, injury to body, health or liberty. These damage claims shall be time-barred after ten years, independent of knowledge. The reductions of the statute of limitation periods shall not apply for claims which are based on an intentional or grossly negligent breach of obligation by the apartmenthouse.

III. Performances, Prices, Payment, Set-off

- The apartmenthouse is obligated to keep the apartments reserved by the customer available and to render the agreed performances.
- The customer is obligated to pay the agreed or applicable apartmenthouse rates for apartments provided and for other services used. This shall also apply to the apartmenthouse's services and outlays to third parties caused by the customer. The agreed prices shall include the respective statutory Value Added Tax.
- The apartmenthouse can make its agreement to the customer's later request for a reduction of the number of reserved apartments, services of the apartmenthouse or the customer's length of stay dependent upon the increase of the price for the apartments and/or the other services.
- Apartmenthouse invoices not showing a due date are payable and due in full within ten days of receipt of the invoice without deduction. The apartmenthouse shall be entitled at any time to make accumulating accounts receivable payable and due and to demand payment with undue delay. With default of payment, the apartmenthouse shall be entitled to demand the respectively applicable statutory default interest in the amount of currently 8% or, with legal transactions with a consumer, in the amount of 5% above the base interest rate. The apartmenthouse reserves the right to prove greater damage.
- The apartmenthouse is entitled to require a reasonable advance payment or security deposit from the customer upon conclusion of the contract in the form of a credit card guarantee, an advance payment, etc. The amount of the advance payment and payment dates may be agreed in text form in the contract. With advance payments or security deposits for package tours, the statutory provision shall remain unaffected.
- In justified cases, e.g. the customer's default in payment or expansion of the scope of the contract, the apartmenthouse shall be entitled, also after the conclusion of the contract up to the commencement of the stay, to demand an advance payment or security deposit within the meaning of the above-mentioned No.5 or an increase of the advance payment or security deposit agree in the contract up to the total agreed remuneration.
- Furthermore, the apartmenthouse shall be entitled, at the commencement and during the customer's stay, to demand a reasonable advance payment or security deposit within the meaning of the above-mentioned No. 5 for existing and future accounts receivable from the contract, insofar as such has not already been paid pursuant to the above-mentioned No. 5 and/or No.6.
- The customer may only set-off or reduce or clear a claim by the apartmenthouse with a claim which is undisputed or decided with final, res judicata effect.
- Pets may only be brought in if the apartmenthouse has consented before hand, and a charge may be imposed.
- In the event of an official inflation rate of over 3% the apartmenthouse reserves the right to match its rates accordingly, so long as there is no more than a 6 month period between the booking dates and the arrival date. Should the time between booking date and arrival date be over 6 month then the apartmenthouse will adjust the rates per day for the current stay accordingly.

IV. VAT treatment; duration of lease

- The Contracting Parties agree that the requirements of section 12 paragraph 2 No. 11 and of section 4 No. 12 sentence 2 of the German Turnover Tax Act¹ (Umsatzsteuergesetz - UStG) are met and that they exclusively enter into accommodation contracts within the meaning of that Act.
- The Landlord hereby affirms that the rooms provided are under no circumstances offered for long-term use and that they are therefore never made available as habitual abodes² within the meaning of sections 8 and 9 of the German Fiscal Code (Abgabenordnung - AO).
- The Tenant duly acknowledges this and affirms that he/she does not intend such use, nor will demand or undertake such use. If the tenant is entering into this Contract on behalf of persons other than himself/herself, the Tenant/Contracting Party hereby affirms that the user or users of the leased property will be informed of this requirement, will respect it and take corresponding action.
- The Landlord is entitled to demand evidence of the Tenant's place of residence and habitual abode and to hold this evidence along with the reservation documents.
- The Contracting Parties agree that they will endeavour to take suitable action, in keeping with the prevailing legal state of affairs and findings, to ensure compliance with the rental conditions set out above.
- If the current or any future legal state of affairs gives rise to taxation circumstances which differ from the current ones, the Contracting Parties hereby agree to work together and support each other in clarifying and if necessary rectifying those circumstances.
- Any right to damages and/or redress arising from the rectification of those circumstances is hereby excluded.

V. Repudiation by customer (Cancellation, annulment/ Failure to Use Apartmenthouse Services (No Show))

- Cancellation by the customer of the contract concluded with the apartmenthouse requires the apartmenthouse's consent in text form. If such is not given, then the price agreed in the contract must be paid even if the customer does not avail himself of contractual services.
- To the extent the apartmenthouse and customer agreed in text form upon a date for a cost-free cancellation of the contract, the customer may cancel up to the contract up to that date without incurring payment or damage compensation claims by the apartmenthouse. The customer's right of cancellation shall expire if he does not exercise his cancellation right in text form vis-à-vis the apartmenthouse by the agreed date. If rooms are not used by the customer, the apartmenthouse must apply credit for the income from renting the apartmenthouse to other parties and also for saved expenses.

- If apartments are not used by the customer, the apartmenthouse must credit the income from renting the apartments to other parties and also for saved expenses. If the rooms are not otherwise rented, the apartmenthouse can demand the contractually agreed rate and assess a flat rate for the saved expenses of the apartmenthouse. In this case, the customer is obligated to pay at least 90% of the contractually agreed rate for lodging with or without breakfast, 70% for apartment and half-board, and 60% for apartment and full-board arrangements. The customer is at liberty to show that the above-mentioned claim was not created or not created in the amount demanded.
- During fairs there is a special cancellation policy. Cancellations 12 weeks prior to arrival are free of charge. Cancellations made after that deadline will be charged with 100 percent.

VI. Cancellation by Apartmenthouse

- Insofar as it was agreed in text form that the customer can cancel the contract at no cost within a certain time period, the apartmenthouse is entitled for its part to cancel the contract during this time period if inquiries from other customers regarding the contractually reserved apartments exist and the customer, upon inquiry thereof by the apartmenthouse does not waive his right of cancellation.
- If an agreed advance payment or security deposit demanded pursuant to Item clause III, No.5 and/or No.6 was not made even after a reasonable grace period set by the apartmenthouse has expired, then the apartmenthouse is likewise entitled to cancel the contract.
- Moreover, the apartmenthouse is entitled to effect extraordinary cancellation of the contract for a materially justifiable cause, e.g. if
 - force majeure or other circumstances for which the apartmenthouse is not responsible make it impossible to fulfill the contract;
 - apartments are reserved with culpably misleading or false information regarding material contractual facts, such as the identity of the customer or the purpose of his stay;
 - the apartmenthouse has justified cause to believe that use of the apartmenthouse's services might jeopardize the smooth operation of the apartmenthouse, its security or public reputation, without being attributable to the apartmenthouse's sphere of control or organization;
 - the purpose of the cause of the stay is illegal;
 - there is a breach of the above-mentioned item clause 1, No.2 supra.
- The customer can derive no damage compensation rights from justified cancellation by the apartmenthouse.

VII. Apartments availability, Delivery and Return

- The customer does not acquire the right to be provided specific apartments insofar as this is not expressly agreed in text form.
- Reserved apartments are available to the customer starting at 3:00 p.m. on the agreed arrival date. The customer does not have the right to earlier availability.
- Apartments must be vacated and made available to the apartmenthouse no later than 12:00 noon on the agreed departure date. After that time, on the grounds of the delayed vacating of the apartment for use exceeding the contractual time, the apartmenthouse may charge 50 % of the full accommodation rate (list price) for the additional use of the apartment until 6:00 p.m. (after 6:00 p.m.: 100 percent). Contractual claims of the customer shall not be established hereby. The customer is at liberty to prove that the apartmenthouse incurred no or much lesser claim to use damages.
- The tenant has the responsibility to treat the apartment and its content with due care and attention. The apartmenthouse reserves the right to charge the tenant for damages and repairs caused to the interior including furniture and fittings, water or fire damage and any ramifications due to these, as well as damages caused by pets, or through misuse or through not exerting due care and fall outside the normal wear and tear.

VIII. Liability of the Apartmenthouse

- The apartmenthouse is liable to the performance of its obligations arising from the contract. Claims of the customer for reimbursement of damages are precluded except for such which result from death, injury to body health and the apartmenthouse is responsible for the breach of the obligation, other damage which is caused by an intentional or grossly negligent breach of obligation and damage which is caused from an intentional or negligent breach of obligations of the apartmenthouse which are typical for the contract. A breach of obligation of the apartmenthouse is deemed to be the equivalent to a breach of statutory representative or vicarious agent. Should disruptions or defects in the performance of the apartmenthouse occur, the apartmenthouse shall act to remedy such upon knowledge thereof or upon objection by the customer made without undue delay. The customer shall be obliged to undertake actions reasonable for him to eliminate the disruption and to keep any possible damage to a minimum.
- The apartmenthouse is liable to the customer for property brought into the apartmenthouse in accordance with the statutory provisions, i.e., up to one hundred times the apartment rate but, however, a maximum amount of \approx 3.500.00 and, in deviation, for cash, securities and valuables, a maximum amount up to \approx 800.00. Cash, securities and valuables up to a maximum value of 10.226 \approx may be stored in the apartmenthouse safe or apartment safe. The apartmenthouse recommends that guests make use of this possibility.
- Insofar as a parking space is provided to the customer in the apartmenthouse garage or a apartmenthouse parking lot, this does not constitute a safekeeping agreement, even if a fee is exchanged. The apartmenthouse assumes no liability for loss of or damage to motor vehicles parked or manoeuvred on the apartmenthouse's property and the contents thereof, except for cases of intent or gross negligence. For the preclusion of damage claims of the customer, the regulation of the above-mentioned No.1, sentences 2 to 4 supra shall apply respectively.

IX. Final Provisions

- Amendments or supplements to the contract, the acceptance of applications or these General Terms and Conditions for Apartmenthouse Accommodation should be made in text form. Unilateral amendments and supplements by the customer are not valid.
- Place of performance and payment is the location of the apartmenthouse.
- In the event of dispute, including disputes for checks and bills of exchange, the courts at the location of the apartmenthouse's registered office according to corporate law shall have exclusive jurisdiction for commercial transactions. Insofar as a contracting party fulfils the requirements of section 38, paragraph 2, of the German Civil Code of Civil Procedure and does not have a general venue within the country, the courts at the location of the apartmenthouse's registered office according to corporate law shall have jurisdiction.
- The contract is governed by and shall be construed in accordance with the laws of the Federal Republic of Germany. The application of the UN Convention on the International Sale of Goods and the Conflict of Law are precluded.
- Should individual provisions of these General Terms and Conditions be or become invalid or void, the validity of the remaining provisions shall remain unaffected thereby. The statutory provisions shall also be applicable.

¹ Auch als Value Added Tax Act übersetzt, aber die Europäische Kommission verwendet den Ausdruck Turnover Tax Act - siehe http://ec.europa.eu/taxation_customs/resources/documents/taxation/vat/traders/vat_refunds/2010/vademecum-refund-germany_2010_en.pdf

² Der Bundesministerium der Justiz und für Verbraucherschutz verwendet diese Übersetzung von "gewöhnlicher Aufenthalt" - siehe http://www.gesetze-im-internet.de/ao_1977/